WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27..07..2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE

and

THE HON'BLE MR.JUSTICE IBRAHIM KALIFULLA

Tax Case (Appeal) Nos.33 of 2002 and 22 of 2003

M/s.Titanium Equipment and Anode Mfg. Co. Ltd.,
Team House, GST Road, Vandalur.
Chennai.
..Appellant in both the appeals.

Vs.

The Deputy Commissioner of Income-tax,
Special Range VII,
Chennai. ..Respondents in both the appeals.

Appeals filed under Section 260-A of the Income-tax Act, 1961 against the orders of the Income-tax Appellate Tribunal "C" Bench dated 30.05.2001 passed in ITA Nos.2799 of 1992, 1211 of 1990 and 280/Madras/92.

T.C(A)No.22 of 2003

PAN GIR.No.47-066-CX-3227 dated 22.3.1991 Assessment Year-1986-87 on the file of the Deputy Commissioner of Income Tax Special Range VII Madras.

C.NO.1242(39&40/89 dated 29.1.1990 Assessment year 1985-86 and 1986 and 1986-87 on the file of the commissioner of Income Tax Tamil Nadu II Madras.

T.C(A) 33 of 2002

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

PAN.GIR.No.47 006 CZ-3727 dated 30.3.1990 Assessment Year 1987-88 on the file of the Deputy Commissioner of Income Tax Special Range VII Madras.

I.T.A.No.33/90-91-SR VII Dated 26.8.1992 Assessment Year 1987-88-on the file of the Commissioner of Income Tax(A) VII Madras.

For Appellant :: Mr.P.P.S.Janarthanaraja

For Respondent :: Mrs.Pushya Sitaraman,
Sr. Standing Counsel for I.T.

J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

These two appeals under Section 260A of the Income-tax Act are being disposed of by a common judgment.

2. In both these appeals one common question of law involved is whether the Tribunal was right in upholding the order of the CIT (Appeals) disallowing extra shift allowance and additional depreciation on the assets leased out by the assessee?

3. The assessee is a public limited company registered under the Indian Companies Act, and the relevant assessment year is 1986-87. The assessee claimed extra shift depreciation allowance on the leased out assets. The authorities below rejected this claim on the ground that since the assessee had leased out the assets it could not be said that it used the assets itself.

4. In Parkside Explosives and Industries Limited Vs. The Commissioner of Income Tax, Coimbatore, Tax Case Reference No.91 of 2000 a Division Bench of this High Court following the decision of the High Court of Karnataka in Commissioner of Income-tax Vs. Maharashtra ApexCorporation Limited, 234 ITR 484 (which decision was upheld by the Supreme Court in Commissioner of Income-tax Vs. Maharashtra Apex Corporation Limited, 254 ITR 98) held that the lessor is entitled to the extra shift and additional depreciation allowance on the assets leased out. Hence, the view of the Tribunal and other Income-tax authorities, in our opinion, is not correct.

5. However, it is urged by the learned counsel for the department that there is no finding of the Income-tax Appellate Tribunal or the lower Income-tax authorities that the lessee in fact had worked multiple shifts.

6. We have carefully perused the order of the Tribunal, CIT (Appeals) and the Assessing Officer, and find that this submission is correct. There is no mention in any of these orders that the lessee had in fact worked multiple shifts.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

7. In the circumstances, while we set aside the impugned orders of the Tribunal and the CIT (Appeals) we remand the matter to the CIT (Appeals) for recording a finding on this point after giving the assessee as well as the department an opportunity to produce their evidence as to whether the lessee had in fact worked multiple shifts. If it is found that the lessee had in fact worked multiple shifts the assessee will be entitled to the aforesaid allowance.

8. In T.C.No.33 of 2002 the appellant has also raised the issue of applicability of Section 32A(7) of the Income-tax Act. The Tribunal has rejected the assessee's appeal following the decision reported in 119 ITR 454, which deals with Sections 75 to 77 of the Income-tax Act. However, there is no mention of Section 32A(7) therein. Since, that provision has not been looked into by the Tribunal or the lower authorities, the CIT (Appeals) will also consider the assessee's claim in respect of Section 32A(7) also.

8. The appeals are allowed, impugned judgments of the Tribunal and CIT (Appeals) are set aside, and the matter is remanded to the CIT (Appeals) to pass a fresh order in accordance with law and in the light of the observations made above.

Sm

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Income Tax Appellate Tribunal,
Madras 'C' Bench, Rajaji Bhavan,
Besant Nagar, Madras-90

2. The Commissioner of Income Tax
Tamil Nadu II,
Madras-34
3. The Commissioner of Income Tax
(Appeals), VII, Madras-34.

4. The Deputy Commissioner of Income-tax,
Special Range VII,
Chennai.
+1 CC to Mr.Pushya sitaraman,Advocate, SR No.30933

VC(CO)
BG/23.08.2005.

https://hcservices.ecourts.gov.in/hcservices/